

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S

1

SENATE BILL 701

Short Title: Durham City Antidiscrimination.

(Local)

---

Sponsors: Senators Lucas; and Gulley.

---

Referred to: State and Local Government.

---

April 1, 1999

A BILL TO BE ENTITLED

1 AN ACT TO AUTHORIZE THE CITY OF DURHAM TO PROHIBIT  
2 DISCRIMINATION IN EMPLOYMENT, PUBLIC ACCOMMODATIONS, AND  
3 HOUSING BASED ON CRITERIA IN ADDITION TO RACE, COLOR,  
4 NATIONAL ORIGIN, RELIGION, SEX, DISABILITY, AND AGE, AND TO  
5 PRESCRIBE THE PROCEDURE FOR THE ADOPTION OF ANY SUCH  
6 ORDINANCE.  
7

8 The General Assembly of North Carolina enacts:

9 Section 1. The full title of Chapter 227 of the 1993 Session Laws reads as  
10 rewritten:

11 "AN ACT TO AUTHORIZE THE CITY OF DURHAM AND DURHAM COUNTY TO  
12 PROHIBIT ACTS OF DISCRIMINATION IN EMPLOYMENT AND PUBLIC  
13 ACCOMMODATIONS BASED ON RACE, COLOR, NATIONAL ORIGIN,  
14 RELIGION, SEX, DISABILITY, OR ~~AGE~~-AGE AND TO AUTHORIZE THE CITY  
15 OF DURHAM TO PROHIBIT DISCRIMINATION IN EMPLOYMENT, PUBLIC  
16 ACCOMMODATIONS, AND HOUSING BASED ON CRITERIA IN ADDITION TO  
17 RACE, COLOR, NATIONAL ORIGIN, RELIGION, SEX, DISABILITY, AND AGE,  
18 AND TO PRESCRIBE THE PROCEDURE FOR THE ADOPTION OF ANY SUCH  
19 ORDINANCE."

1 Section 2. Section 2 of Chapter 227 of the 1993 Session Laws, as amended by  
2 Chapter 537 of the 1995 Session Laws, reads as rewritten:

3 "Sec. 2. Authority to adopt ordinances. – A city or county may adopt ordinances to  
4 prohibit discrimination in employment and public accommodations based on race, color,  
5 national origin, religion, sex, disability, ~~or~~ having attained the age of 40 or more ~~years.~~  
6 years, or any other criteria prescribed in an ordinance pursuant to Section 2.2 of this act.  
7 To assist in the enforcement of these ordinances, a city or county may create an agency or  
8 commission of the city or county ('the Agency') to take any actions and to have any  
9 powers as are appropriate and necessary to implement these ordinances including, but not  
10 limited to, the powers to: receive; initiate; investigate; seek to conciliate; hold hearings on  
11 and pass upon complaints; mediate alleged violations of these ordinances; issue orders  
12 against persons it finds, after notice and hearing, to have violated these ordinances; and to  
13 seek enforcement of the orders by a court.

14 The General Assembly does not intend to expand the authority or powers of the  
15 Agency beyond those prescribed by federal laws or regulations with respect to a specific  
16 employer or public accommodation. The Agency may, as part of an enforcing order,  
17 require any person to cease and desist from unlawful practices and to engage in additional  
18 remedial action as may be appropriate, including, but not limited to, require the person:

- 19 (1) To hire, reinstate, or upgrade aggrieved individuals, with or without  
20 back pay;
- 21 (2) To admit aggrieved individuals or to allow aggrieved individuals to  
22 participate in guidance programs, apprenticeship training programs, on-  
23 the-job training programs, or other occupational training or retraining  
24 programs; and to use objective criteria in the admission of any  
25 individual to these programs;
- 26 (3) To submit to the Agency, for approval or disapproval, plans to eliminate  
27 or reduce imbalance with respect to race, color, national origin, religion,  
28 sex, disability, or age;
- 29 (4) To provide technical assistance to aggrieved individuals;
- 30 (5) To report as to the manner of compliance with this act;
- 31 (6) To post notices in conspicuous places in the form prescribed by the  
32 Agency;
- 33 (7) To admit or restore an aggrieved individual to a place of public  
34 accommodation.

35 When the Commission determines that a respondent has engaged in unlawful  
36 intentional discrimination in an employment practice (not an employment practice that is  
37 unlawful because of its disparate impact), the Commission may enforce an ordinance  
38 adopted pursuant to this act by applying to the superior court of the county in which the  
39 city is predominantly located for any appropriate legal and equitable remedies, including,  
40 but not limited to, mandatory and prohibitory injunctions and orders of abatement,  
41 attorneys' fees, compensatory and punitive damages, and the court may grant such  
42 remedies. A complainant shall not recover punitive damages against a respondent unless  
43 the complainant demonstrates that the respondent engaged in a discriminatory practice

1 with malice or with reckless indifference to the protected rights of an aggrieved  
2 individual under an ordinance adopted pursuant to this act.

3 No compensatory damages shall be awarded for back pay, interest on back pay, or any  
4 other type of relief authorized under section 706(g) of the Civil Rights Act of 1964,  
5 42 U.S.C. § 2000e-5(g), as amended.

6 If a complainant seeks compensatory or punitive damages in an action brought under  
7 an ordinance adopted pursuant to this act, any party may demand a trial by jury."

8 Section 3. Chapter 227 of the 1993 Session Laws, as amended by Chapter 537  
9 of the 1995 Session Laws, is further amended by adding a new section to read:

10 "Sec. 2.2. An ordinance adopted pursuant to Section 2 of this act may prohibit  
11 discrimination in employment and public accommodations based on any criteria in  
12 addition to race, color, national origin, religion, sex, disability, or having attained the age  
13 of 40 or more years, provided the following procedure is followed with respect to each  
14 additional criteria:

15 (1) The Agency, created pursuant to Section 2 of this act, shall compile a  
16 report in which the Agency documents the facts, events, or occurrences  
17 that, in the opinion of the Agency, indicate the need for the additional  
18 criteria upon which prohibition of discrimination shall be based.

19 (2) The Agency shall make the report available for public inspection and  
20 shall hold at least one public hearing at which persons who wish to  
21 comment on the report may do so.

22 (3) The report, together with any amendments to the report that the Agency  
23 may make based upon comments received at the public hearing, shall be  
24 transmitted to the city council of the city.

25 (4) The city council may consider the report and may cause a proposed  
26 ordinance to be prepared that prohibits discrimination based on the  
27 criteria specified in the report.

28 (5) The city council shall cause the report and the proposed ordinance to be  
29 made available for public inspection in the office of the city clerk at  
30 least 10 days prior to the date of the public hearing specified in  
31 subdivision (6) of this section.

32 (6) The city council shall hold at least one public hearing on the proposed  
33 ordinance. The public hearing shall be held no sooner than 10 days  
34 after the proposed ordinance is made available for public inspection  
35 pursuant to subdivision (5) of this section. A notice of the public  
36 hearing shall be given at least once in a newspaper having general  
37 circulation in the city. The notice shall be published no fewer than five  
38 and no more than 10 days before the date of the public hearing.

39 (7) If after considering the Agency's report, the proposed ordinance, and the  
40 comments made at the public hearing, the city council finds that it is in  
41 the public interest to adopt the proposed ordinance, or the proposed  
42 ordinance with such amendments as the city council may deem

1           advisable, then the city council may adopt the ordinance or the amended  
2           ordinance.

- 3           (8) An ordinance adopted pursuant to this section shall provide that the  
4           ordinance will terminate at a time no later than five years after adoption  
5           unless extended by further action of the city council. A termination of  
6           the ordinance pursuant to this subdivision shall not terminate any action  
7           or proceeding under the ordinance that was pending at the time the  
8           ordinance terminated. An ordinance extending the effectiveness of the  
9           first ordinance need not contain a further termination date and may be  
10           adopted without the necessity of following the procedure prescribed in  
11           this section."

12           Section 4. Section 121 of the Charter of the City of Durham, being Chapter  
13 671 of the 1975 Session Laws, added by Chapter 373 of the 1983 Session Laws, and as  
14 rewritten by Section 1 of Chapter 379 of the 1991 Session Laws, reads as rewritten:

15           "Sec. 121. Equal Housing. The City Council may adopt ordinances prohibiting  
16 discrimination in real estate transactions on the basis of race, color, sex, religion, national  
17 origin, age, familial status, ~~or handicap in real estate transactions.~~ handicap, or any other  
18 criteria prescribed in an ordinance pursuant to Section 121.1 of this Charter. Such  
19 ordinances may regulate or prohibit any act, practice, activity or procedure related,  
20 directly or indirectly to the sale or rental of public or private housing, which affects or  
21 may tend to affect the availability or desirability of housing on an equal basis to all  
22 persons; may provide that violations constitute a misdemeanor, and shall be punishable  
23 under G.S. 14-4; may subject the offender to civil penalties; and may provide that the  
24 City may enforce the ordinances by application to the General Court of Justice, Superior  
25 Court Division, for appropriate legal and equitable remedies, including but not limited to,  
26 mandatory and prohibitory injunctions and orders of abatement, attorney's fees and not  
27 more than one thousand dollars (\$1,000) punitive damages, and the court shall have  
28 jurisdiction to grant such remedies."

29           Section 5. The Charter of the City of Durham, enacted as Chapter 671 of the  
30 1975 Session Laws, as amended, is further amended by adding a new section to read:

31           "Sec. 121.1. An ordinance adopted pursuant to Section 121 of this Charter may  
32 prohibit discrimination in real estate transactions based on any criteria in addition to race,  
33 color, sex, religion, familial status, or handicap, provided the following procedure is  
34 followed with respect to each additional criteria:

- 35           (1) The Committee, created pursuant to Section 123 of this Charter, shall  
36 compile a report in which the Committee documents the facts, events, or  
37 occurrences that, in the opinion of the Committee, indicate the need for  
38 the additional criteria upon which prohibition of discrimination shall be  
39 heard.  
40           (2) The Committee shall make the report available for public inspection and  
41 shall hold at least one public hearing at which persons who wish to  
42 comment on the report may do so.

- 1           (3)    The report, together with any amendments to the report that the  
2           Committee may make based upon comments received at the public  
3           hearing, shall be transmitted to the city council.
- 4           (4)    The city council may consider the report and may cause a proposed  
5           ordinance to be prepared that prohibits discrimination based on the  
6           criteria specified in the report.
- 7           (5)    The city council shall cause the report and the proposed ordinance to be  
8           made available for public inspection in the office of the city clerk at  
9           least 10 days prior to the date of the public hearing specified in  
10          subdivision (6) of this section.
- 11          (6)    The city council shall hold at least one public hearing on the proposed  
12          ordinance. The public hearing shall be held no fewer than 10 days after  
13          the proposed ordinance is made available for public inspection pursuant  
14          to subdivision (5) of this section. A notice of the public hearing shall be  
15          given at least once in a newspaper having general circulation in the city.  
16          The notice shall be published no fewer than five and no more than 10  
17          days before the date of the public hearing.
- 18          (7)    If after considering the Committee's report, the proposed ordinance, and  
19          the comments made at the public hearing, the city council finds that it is  
20          in the public interest to adopt the proposed ordinance, or the proposed  
21          ordinance with such amendments as the city council may deem  
22          advisable, then the city council may adopt the ordinance.
- 23          (8)    An ordinance adopted pursuant to this section shall provide that the  
24          ordinance will terminate at a time no later than five years after adoption  
25          unless extended by further action of the council. A termination of the  
26          ordinance pursuant to this subdivision shall not terminate any action or  
27          proceeding under the ordinance that was pending at the time the  
28          ordinance terminated. An ordinance extending the effectiveness of the  
29          initial ordinance need not contain a further termination date and may be  
30          adopted without the necessity of following the procedure prescribed in  
31          this section."

32           Section 6. This act applies to the City of Durham only.

33           Section 7. This act is effective when it becomes law.